

In the United States Court of Federal Claims

OFFICE OF SPECIAL MASTERS

No. 18-181V

Filed: May 19, 2023

UNPUBLISHED

ERIN CODY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

Special Master Horner

Damages Decision Based on Proffer;
Influenza (Flu) Vaccine; Shoulder
Injury Related to Vaccine
Administration (SIRVA)

Michael Patrick Milmoie, Law offices of Leah V. Durant, PLLC, Washington, DC, for petitioner.

Nancy Tinch, U.S. Department of Justice, Washington, DC, for respondent.

DECISION AWARDING DAMAGES¹

On February 6, 2018, Erin Cody filed a petition for compensation under the National Vaccine Injury Compensation Program, 42 U.S.C. §300aa-10, *et seq.*² (the “Vaccine Act”). Petitioner alleges that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”). (ECF No. 1.)

On October 5, 2022, a ruling on entitlement was issued, finding Petitioner entitled to compensation for SIRVA. On May 19, 2023, Respondent filed a proffer on award of compensation (“Proffer”) indicating Petitioner should be awarded \$135,000.00 in compensation for pain and suffering and \$3,293.11 for past unreimbursable expenses for a total award of \$138,293.11. (ECF No. 95.) In the Proffer, Respondent represented that Petitioner agrees with the proffered award. *Id.* Based on the record as a whole, I find that Petitioner is entitled to an award as stated in the Proffer.

¹ Because this unpublished decision contains a reasoned explanation for the action in this case, I am required to post it on the United States Court of Federal Claims' website in accordance with the E-Government Act of 2002. 44 U.S.C. § 3501 note (2012) (Federal Management and Promotion of Electronic Government Services). **This means the decision will be available to anyone with access to the internet.** In accordance with Vaccine Rule 18(b), Petitioner has 14 days to identify and move to redact medical or other information, the disclosure of which would constitute an unwarranted invasion of privacy. If, upon review, I agree that the identified material fits within this definition, I will redact such material from public access.

² National Childhood Vaccine Injury Act of 1986, Pub. L. No. 99-660, 100 Stat. 3755.

Pursuant to the terms stated in the attached Proffer, **I award Petitioner a lump sum payment of \$138,293.11, representing \$135,000.00 in compensation for pain and suffering and \$3,293.11 in compensation for past unreimbursable expenses, in the form of a check payable to Petitioner.** This amount represents compensation for all damages that would be available under § 15(a).

The clerk of the court is directed to enter judgment in accordance with this decision.³

IT IS SO ORDERED.

s/Daniel T. Horner
Daniel T. Horner
Special Master

³ Pursuant to Vaccine Rule 11(a), entry of judgment can be expedited by the parties' joint filing of notice renouncing the right to seek review.

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS
OFFICE OF SPECIAL MASTERS**

ERIN CODY,

Petitioner,

v.

SECRETARY OF HEALTH AND
HUMAN SERVICES,

Respondent.

No. 18-181

Special Master Daniel T. Horner
ECF

RESPONDENT’S PROFFER ON AWARD OF COMPENSATION

On February 6, 2018, Erin Cody (“petitioner”) filed a petition for compensation under the National Childhood Vaccine Injury Act of 1986, 42 U.S.C. §§ 300aa-1 to -34 (“Vaccine Act” or “Act”), alleging that she suffered a Shoulder Injury Related to Vaccine Administration (“SIRVA”), as defined in the Vaccine Injury Table, following administration of an influenza vaccine she received on December 31, 2016. Petition (“Pet.”) at 1. On October 5, 2022, Special Master Horner issued a Ruling on Entitlement finding petitioner entitled to compensation.¹ ECF No. 85.

¹ Respondent has no objection to the amount of the proffered award of compensation set forth herein. Assuming the Special Master issues a damages decision in conformity with this proffer, respondent waives his right to seek review of that decision. However, respondent reserves his right, pursuant to 42 U.S.C. § 300aa-12(e), to seek review of the Special Master’s October 5, 2022 Ruling on Entitlement.

I. Items of Compensation

A. Pain and Suffering

Respondent proffers that petitioner should be awarded \$135,000.00 in pain and suffering.

See 42 U.S.C. § 300aa-15(a)(4). Petitioner agrees.

B. Past Unreimbursable Expenses

Evidence supplied by petitioner documents that she incurred past unreimbursable expenses related to her vaccine-related injury. Respondent proffers that petitioner should be awarded past unreimbursable expenses in the amount of \$3,293.11. *See* 42 U.S.C. § 300aa-15(a)(1)(B). Petitioner agrees.

These amounts represent all elements of compensation to which petitioner is entitled under 42 U.S.C. § 300aa-15(a). Petitioner agrees.

II. Form of the Award

Respondent recommends that the compensation provided to petitioner should be made through a lump sum payment as described below and requests that the Special Master's decision and the Court's judgment award the following²: a lump sum payment of \$138,293.11, in the form of a check payable to petitioner.

Petitioner is a competent adult. Evidence of guardianship is not required in this case.

III. Summary of Recommended Payments Following Judgment

Lump sum payable to petitioner, Erin Cody:	\$138,293.11
--	---------------------

Respectfully submitted,

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

² Should petitioner die prior to entry of judgment, the parties reserve the right to move the Court for appropriate relief. In particular, respondent would oppose any award for future lost earnings and future pain and suffering.

C. SALVATORE D'ALESSIO
Director
Torts Branch, Civil Division

HEATHER L. PEARLMAN
Deputy Director
Torts Branch, Civil Division

DARRYL R. WISHARD
Assistant Director
Torts Branch, Civil Division

/s/ NANCY O. TINCH
Nancy O. Tinch
Trial Attorney
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 146 Benjamin Franklin Station
Washington D.C. 20044-0146
(202) 305-2078
nancy.tinch@usdoj.gov

Dated: May 19, 2023